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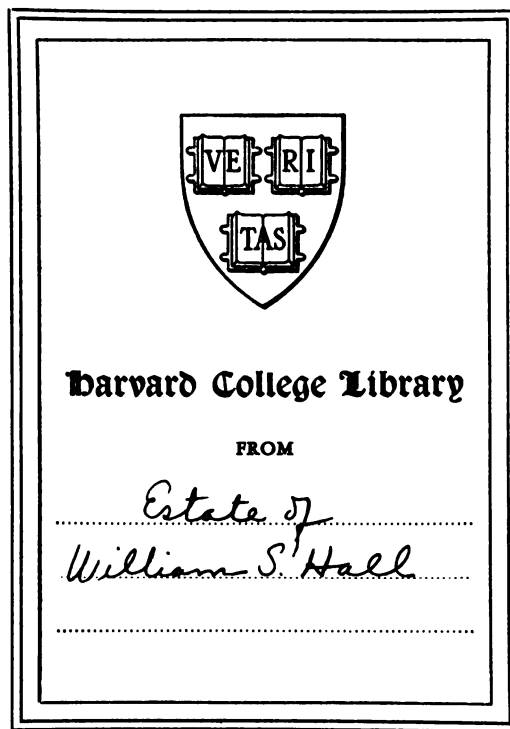
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# ALBERT MASON

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Proceedings of the Superior Court  
and SUPERIOR COURT  
of ALBERTA  
of the Superior Court

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Proceedings *of the* SUFFOLK BAR  
*and* SUPERIOR COURT in memory  
*of* ALBERT MASON, Chief Justice  
of the Superior Court, June 16, 1905

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1905

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## PROCEEDINGS OF THE SUFFOLK BAR AND SUPERIOR COURT.

JUNE 16, 1905.

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The meeting of the members of the Suffolk Bar, called to take action upon the report of a committee appointed to prepare and present resolutions upon the death of the late Albert Mason, chief justice of the Superior Court, was held in the Superior Court Room, second session, on Friday, June 16, 1905, at 2 P.M.

The meeting was called to order by Albert E. Pillsbury, and on his motion Charles Pelham Greenough was chosen chairman of the meeting, and Arthur Lord secretary. Upon taking the chair Mr. Greenough stated the purpose for which the meeting was called, and that it was ready to receive the resolutions of the committee.

Mr. Pillsbury then stated that the committee had performed the duty with which it was charged, and read the following memorial:—

### THE MEMORIAL.

The members of this bar desire to place on record their appreciation of the upright life, the sterling character, and the honorable public service of Albert

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## ALBERT MASON

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Mason, late chief justice of the Superior Court, whose death brings not only a personal sorrow, but, to the Commonwealth he loved and served so well, a public loss.

Born in Middleboro, in the County of Plymouth, Nov. 7, 1836, and admitted to the bar of that county Feb. 15, 1860, his practice of the law began in the town of Plymouth. In July, 1862, he enlisted in the army for the term of three years, and served with distinction, holding commissions as lieutenant and captain and acting as regimental and brigade quartermaster.

In 1874 he was appointed by Governor Washburn a member of the Board of Harbor Commissioners, and in 1879 Governor Talbot made him the chairman of the Harbor and Land Commissioners. This place he held until his appointment to the bench, discharging his duties with the ability and faithfulness which characterized all his work.

In 1882 Governor Long appointed him an associate justice of the Superior Court. With his acceptance of this office began his most valuable service,—a work for which he possessed unusual qualifications of mind and character.

In 1890, upon the resignation of Chief Justice Brigham, he was appointed the chief justice of the Superior Court, and continued to discharge its honorable and laborious duties until his death on Jan. 2, 1905.

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## ALBERT MASON

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The position of justice of the Supreme Court he was compelled to decline on account of his health, which was so infirm as to render it inexpedient, if not impossible, for him to assume new duties.

Following the best New England custom and tradition, in addition to his judicial work, which may be said to have been his life's work, he gave freely of his time in the performance of other civic duty. He filled the office of chairman of the Selectmen in Plymouth, and that of chairman of the School Committee in Brookline for many years. He served on many special committees in municipal affairs, and his clear vision and sound judgment aided much in the solution of practical problems. He had great confidence in the fairness and good sense of the people generally, and believed implicitly in those fundamental principles which underlie and control our institutions and which have their roots deep in heredity, training, and social life. But he was not a blind optimist, and men and women to him were very human, with serious imperfections, and yet with unlimited capacity for growth and progress toward that goal for which, with constant struggles and not without tears, all humanity is striving. He believed in man and in the future of the race, because he believed in the wisdom and the omnipotence of God. His nature was profoundly moral and religious. Unswervingly, but without ostentation, he held the truths of divine revelation. For



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him the spiritual vision pierced beyond the confines of sense, and revealed those things which, unperceived and unperceivable by the eye, were of the spirit and the beauty of eternal life. Alike in private and public life, his standard of thought and conduct was the appropriate standard of a nature both strong and beautiful.

He had a tall and commanding figure, dignified in carriage, impressive in repose. His face was strong and firm, but kindly; his manner courteous, but direct and decided.

As a judge, he had large executive and administrative ability, a strong grasp of legal principles, the power of clear and forceful statement, a knowledge of men and things born of wide experience and much reflection, an instinctive desire for and sense of justice, and, crowning all, a saving common sense, without which no successful attempt to administer justice is possible.

His high ideals, his firmness of conviction, and his unquestioning faith were among his most striking characteristics, and gave him a distinct place in the minds and hearts of those who knew him.

ALBERT E. PILLSBURY.  
JAMES R. DUNBAR.  
ARTHUR LORD.  
WALTER I. BADGER.  
FRANKLIN T. HAMMOND.

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ALBERT MASON

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REMARKS OF  
ALBERT E. PILLSBURY.

I had the profoundest respect and affection for Chief Justice Mason, and yet it is with some hesitation that I undertake to say anything here. His character was sincerity itself. If I felt, as some good souls seem to feel, that these memorial occasions are formal and perfunctory, permitting nothing but pious platitudes which can be spoken without feeling and without conviction, I should pay most respect to his memory by remaining silent. It is difficult for me to appreciate the cast of mind which takes seriously the absurd maxim "*De mortuis nil nisi bonum*,"—a sentiment which affronts the dead by attributing to them a character which will not bear exhibition, and affronts the living by assuming that, if their ears are tickled by words of compliment, there is nothing remaining to be satisfied by words of truth.

As I do not accept this adage, as there is no room here for application of it, I indulge my own feelings, in taking final leave of Chief Justice Mason, by a brief expression of my sense of personal loss and my appreciation of his elevated character as a man.

It is not necessary to claim for him that he was a great man or a great judge; and yet what goes to

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the making of a great judge? He was full of intelligence, patience, diligence, courtesy, moderation, sincerity. He held always just, sensible, and temperate views of human conduct and motives. Are there any higher judicial qualities than these, or any more essential to the judicial office? Are we not sometimes inclined to make too much of profound learning or pre-eminent intellectual power? to pay too much attention to what we call qualifications and too little to disqualifications? Of these, I do not think that Chief Justice Mason had any. There was absolutely nothing unjudicial in him or about him. Without any pretensions to genius, with nothing dramatic or spectacular in his character or career, his lamp burned with a pure and steady flame, always lighting before him the path of duty and honor. He lived constantly under a solemn sense of the high responsibility of his office, and surrendered himself to its demands with utter and complete self-abnegation, in the single desire to faithfully perform the duty in hand. And this acute sense of duty was never dulled in the routine labors of more than twenty-two years. There is no doubt, I think, that he brought to the trial of his last case the same quick conscience and anxious endeavor to be right that he brought to his first.

He had, in my view, a higher claim to distinction than most of those who are styled great in one phase of his character which always impressed me

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most, and seemed to set him apart as unique among all the men I have known. A man of affairs all his life, the rare boon seemed bestowed on him to go through life unspotted from the world. If we had to describe him in a single word, perhaps we should call him a high-minded man. But this is not enough to describe him. He was a spiritual-minded man. He lived and thought on a higher level than is permitted to most of human kind. So modest and unpretentious that he seemed to wear his public honors as a badge of service more than of distinction, everything in his demeanor excluding any sense of superiority to others about him, he yet seemed to dwell in an atmosphere of his own, above the mists and vapors of this world. The ideals of other men were his realities, attainable and attained in his daily walk and conversation. He had the spirituality, and perhaps some of the mysticism, of the church of his affection,—a church insignificant in numbers, perhaps, because its faith is adapted to attract only the spiritual-minded. So permeated was he with this impalpable essence that his whole life and conduct seemed to be the outward and visible sign of an inward and spiritual grace. It illumined him. It radiated from him. I never entered his presence without feeling this influence: I shall never think of him without recalling it. He was one of the rare souls sent here to leaven sordid humanity by the purifying and uplifting influence

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of a tranquil and blameless life in a turbulent and sinful world, making it better in life by his example, and in death leaving it richer by the heritage of his memory.

Mr. Chairman, I move the adoption of this memorial, and that the attorney-general be required to present it to the Superior Court.

## REMARKS OF JAMES R. DUNBAR.

The Superior Court has been fortunate in its chief justices. Four men have occupied the position during the whole period since the organization of the court in 1859. The memory of few of us can recall them all; but, whether founded on personal knowledge or the traditions of the bar, there is no difference of opinion as to the fitness of each and all of them in character, ability, or learning.

Among these men, chosen for fitness and equipped for the performance of most delicate and responsible duties, Albert Mason held no subordinate place. In him the best traditions of the office found expression; and, while he performed its duties, respect for its dignity was not lessened nor its efficiency decreased. It is significant of the quality of the man that, so far as I can ascertain, no member of

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## ALBERT MASON

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the court ever felt that any pressure upon or exercise of authority over him had been made by the chief justice, and no member of the court knew what powers were possessed by the chief justice different from or in excess of those possessed by any one of the associate justices. The office brought to him no slight burden of responsibilities and duties. These duties were done so quietly, tactfully, and efficiently that even his associates scarcely knew when they were performed.

Judge Mason was a simple man, as are all men who have the traits of greatness,—direct in thought and speech, insistent upon the truth, and devoted to the highest ideals. The qualities which all recognized in him in his middle and later life were the expression of his nature formed by experience, reflection, struggle, and sacrifice. He had courage as great as any man I ever knew, and in speaking of courage I do not refer simply to that physical bravery which is possessed in some degree by all races and nearly all men, though he did not lack that, but to the courage referred to by Horace in those lines beginning “*Justum ac tenacem propositi virum.*”

He was one of those rare men who never consciously neglect a duty, and for him duty did not exist alone in crises, when the mind is roused and set on fire by excitement and is ready to dare all in a supreme effort at a time when the souls of men “on war’s red techstone ring true metal”; but at all

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times, even when the way was steep and stony, when the burden was heavy, when illness and weakness overwhelmed, his ear was so responsive that no whisper of duty was unheard or unheeded.

His mind was a well-balanced mind, solid rather than brilliant. It moved always on moral lines, and was guided and controlled by deep religious feeling. His judgment was sound, and his mistakes of judgment rare.

His knowledge of men and things, his varied experience, his good judgment, his even temper, his moral strength, as well as his love of justice, his learning, his industry and courage, gave him more than the ordinary qualifications for high judicial station.

Whether sitting with or without a jury charged with the duty of seeing that well-meaning or prejudiced ignorance or incapacity committed no injustice, or striving to extract the truth from conflicting statements, or dealing with an abstract question of law, he was a strong man, a very strong man. I have seen many men who would generally be considered more brilliant, not a few more learned, many as ardent lovers of truth and justice; but I have never seen any man who seemed to me better fitted for the duties of his office, or so completely possessed of those qualities which command the admiration which is given to the highest in character and the love which is founded in respect. All who knew

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him knew with what tenacity he held his mature opinions: all who saw him recognized the sweetness of his temper and character. The whole profession recognized the virility of his mind, his firm knowledge and grasp of legal principles, and the accuracy of his reasoning processes.

As a young man he was compelled to work with his hands for a livelihood. He never had the advantage of a college or university training; but he used his spare time to such advantage that he became well versed in many branches of knowledge, especially in the best literature, and he acquired a clear and cogent literary style.

In his early manhood the call of the country came to him; and, although recently married, he enlisted for the term of three years. His qualities early won recognition, and procured for him promotion to the offices of lieutenant and captain, and placed in his charge the quartermaster department of the regiment, and then of the brigade to which his regiment was attached.

A single incident in his army career will serve to illustrate his courage and his desire to do more than his full duty.

On the evening of the day prior to the assault on Port Hudson, in which his regiment took part, although he was under no obligation to enter the battle because of his duties as quartermaster, he tendered his services to the colonel, and offered to



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participate in the assault the following day. He was given command of his company, and led it in that assault. Those of us who are old enough to recall the stories of the war at first hand, will remember that the fire from the Confederate forces was so hot that our troops were obliged to take shelter in the fallen timber, and remain there during the day until darkness enabled them to withdraw without serious loss. Lying in the midst of his men, he remembered that he had ordered the brigade train to remain at a certain point until it received orders from him. He knew that in an hour or two his brigade would withdraw from the position in which it lay, and would be sadly in need of food. It seemed to him that it was his duty to go back and give orders which would enable the soldiers to be served with rations upon their withdrawal from that position. Every movement brought a shower of rifle balls; but the young captain and quartermaster, by sudden sallies, by creeping, by climbing over fallen timber, followed at all times by the fire of the enemy, succeeded in withdrawing without injury, brought up his supply train, and had rations ready for the troops when they came out from the line of battle.

He held the office of judge for twenty-three years, for fifteen of which he was the chief justice. Perhaps my partiality and friendship affect my judgment, but I do not think he had a superior.

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The work of a judge was to him the highest and greatest service which a man could render to the world, and at all times he worked reverently and gladly. For many years he was seriously afflicted with an incurable malady. There were long periods of time when it seemed to his friends as if it would be impossible for him to continue to work or even to breathe; but his indomitable courage and strong will not only prolonged his life, but enabled him to perform his duties under conditions of health most discouraging, and such as few men could have endured and continue to do their work.

The long strain of an exhausting disease at last wore upon him to such an extent that he was compelled to suspend work and to take what he and his friends thought would be a short rest. He himself was hopeful and determined, as on many other occasions, when he had been obliged to desist for a time from work; but his strength had been too much reduced, and on the second day of January he passed from a blameless life, honored, respected, and loved, to the life for which he had been living all his mature years, which he had seen with the eye of faith, and of which he was no more doubtful than of this mortal life. Whether he rests from his labors, as is the dream of many, or, as he believed, has entered upon a life of activity surpassing all that this life has known or can know, his works do follow him, and we who are left behind follow after with a rev-

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erent love and admiration which no lapse of time shall change.

REMARKS OF  
M. J. SUGHRUE.

I regret that the district attorney, Mr. Oliver Stevens, is prevented by illness from being present, more fittingly to pay this tribute of affection and respect to his friend Chief Justice Mason.

Judge Mason seemed to me to fulfil the ideal which a Massachusetts judge should realize. Dignified, patient, of even temper, courteous, wise, his serene temper affected every one who came before him. He was the typical New England magistrate.

Perhaps in no other place did the character of the chief justice present such an attractive side as on the bench of the criminal court. There where the *Miserere* is the chant most constantly sounding, he appeared at his best; there where human nature is seen at its lowest as well as at its highest,—at its lowest when crime sinks men in utter abasement, at its highest when affection and charity come into court to bring sympathy and assistance to those in sorest need,—in that place the fine qualities of Judge Mason's heart and mind were given broadest scope.

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The tenderness of his nature gave to sorrow whatever of comfort was possible. Persistent and brazen wickedness found in him a stern monitor, but no one ever sought more eagerly to find reason for the exercise of a wise clemency. No judge ever sat on the bench who was more charitable to young offenders, and none was ever more willing to give better opportunity to the victims of unfortunate circumstance or human frailty.

The stronger virtues of courage, unselfishness, fortitude, and self-control were in him constantly exemplified. In him a powerful and searching intelligence was united with a kindly and charitable spirit. He was a man constantly regardful of the duties, great and small, he owed to those about him: to such he paid in full every measure of obligation.

His whole life was such as to grace and give dignity to human nature.

## REMARKS OF ROBERT M. MORSE.

The late chief justice was large of stature, large of intellect, and large of heart. A stranger in our courts, observing his modest bearing, reserved manner, and reticence of speech, would hardly appreciate at once the great reach of his attainments, his legal

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learning, his strong common sense, and his fund of dry humor. He maintained with dignity the high office which he held; and in all causes which came before him, whether in jury trials or in hearings without a jury, at law or in equity, he had the valuable faculty of quickly analyzing complicated facts, and of seizing hold of and determining wisely the real issues.

For many years we have known that he was struggling heroically with serious physical infirmities, and that it required great effort for him to attend to the duties of the court; but no one ever heard him complain, and nothing was allowed to mar his calm, gracious, and kindly demeanor, or to interfere with the full performance of his important work. His place is secure in the long line of our departed worthies, and his name and virtues will always be a precious possession.

I am glad to remember here that I was one of a committee of the bar which secured his portrait for the Law Library, and that we have placed this enduring memorial where the coming generations of our profession may see the face and figure of a judge whom we delighted to honor.

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REMARKS OF  
GEORGE L. MAYBERRY.

*Mr. Chairman,*—The life and character of our late chief justice have been so well and beautifully portrayed by those who have preceded me that I can add but little to what they have said. I can only add my personal tribute to the universal respect and affection with which he was regarded by the members of the bar.

As a trial judge he came very near to fulfilling the lawyer's ideal. He had a keen and logical legal mind, enriched by profound learning. One felt sure that his arguments upon the law of the case would receive intelligent and careful consideration and be given all the weight to which they were entitled. Whether right or wrong, you were sure to receive a patient hearing. The chief justice did you the honor to assume that you might have some point to suggest that was worth hearing.

He had confidence in the efficacy of our judicial system. The judge, the jury, and the counsel, each had their duty to perform, and were given the fullest opportunity to do it. He was content to be the judge, and never sought to try the case for one counsel or the other, nor to get into the jury box.

The whole atmosphere of the court in which he

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presided was such as to lift the practice of the law up to the highest plane. Juries felt that they were indeed most important parts of a great judicial system, and counsel were incited to their best efforts by a sense of keen appreciation and fair treatment. Dignity and kindness, blended in one beautiful and harmonious personality, inspired confidence at the same time that they brought out the best that was in you.

There was not an atom of the artificial either in the dignity of the court or in the deference of the bar. The dignity was as natural as the quiet grandeur of mountain scenery. It was the product of religious sincerity, high character, and conscious strength. The deference was not the result of fear, but of pure respect. You admired his ability and strength, respected his lofty purpose, and loved his genial personality. You could not be otherwise than deferential if you would.

With all of his dignity and kindness and sense of justice, he was not wholly free from the spirit of the combat. He liked to see cases well fought. The keen eyes would flash with appreciation of the sharp thrust and parry. He liked to leave the advocate free to exercise his utmost skill, and was reluctant to strip him of the fruits of a well-fought battle.

We were all proud of our chief justice because he always maintained the high standards for which

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the bench and bar of this Commonwealth are justly celebrated.

But we love to think of him not merely as a judge, but as a man. My early acquaintance with him dates back to my school-days when I had the pleasure of meeting him in his home. I remember well how he impressed me. I remember his intensely interesting talks on legal questions, his high ideals of professional conduct, and, above all, his deeply religious nature. One could not help seeing that he embodied all that is noble in the old New England character,—its strength and its sincerity.

You would expect that such a man would fight life's battle to the end. You are not surprised that neither sickness nor suffering nor advancing years broke his strong spirit or weakened the keen intellect. Stronger and kindlier, if anything, he grew to the very last. And, now that we are called upon to mourn his loss, we may say in all sincerity that the bench or bar of Massachusetts have rarely known one who has brought more honor to them, or whose life has been more of an inspiration to the young lawyer or a greater source of pride and satisfaction to the old.



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REMARKS OF  
BOYD B. JONES.

It would be unnatural on this occasion not to refer, although at the expense of repetition, to the high office which Judge Mason held, and to the manner in which he filled that office.

The Superior Court is the great trial court of this Commonwealth: it is a trial court without a superior, and I believe without an equal, in this country. Its common law and equity jurisdiction embrace almost every conceivable controversy that can arise regarding person or property. The accused come before it for trial, the guilty come before it for probation or punishment. It has the power, for cause, to terminate marital relations: it has jurisdiction in some cases to impose the penalty of death. Its justices, sitting in judgment upon their fellow-men, exercise on earth some of the highest attributes of the Almighty.

Judge Mason was the chief justice of that court, and it was fitting that Judge Mason should be the chief justice of such a court. He so discharged the duties of that high office that he won the approval, the respect, and the admiration of the bench, of the bar, and of the public. He revered the high office which he held, and he carried himself with a fitting

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dignity which impressed everybody and repelled no one. He appreciated the responsibilities of that office, and he spared not his time, his comfort, his strength, or his health, in his efforts to discharge that duty.

He had a judicial temperament that seemingly was not affected by bias or prejudice, and that in reality was indifferent to everything but the merits of the cause as he saw it. He had a nature that was strong and earnest, and that quietly, but very firmly and very completely, controlled the proceedings of his court. In that court there were no bickerings. These qualities, combined with a good knowledge of the law and the power of making a practical operation of it, constituted in him what I believe, and what I have generally heard him regarded to be, a model chief justice. His exterior was calm and unemotional, but there was beneath an affectionate disposition, a warm heart. Those who knew him best will say that he was loving and lovable, that he delighted his friends and that he delighted in his friends.

Mr. Chairman, it is difficult to speak on an occasion like this,—it is with difficulty that the tongue can state what the mind can conceive. The tongue is powerless to express what the heart can feel.

When I think of the chief justice, I am reminded in the words of another of

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"The Judge of the great Assize,  
    . . . good and wise.  
His face with lines of firmness wrought, . . .  
Yet touched and softened, nevertheless,  
With the grace of Christian gentleness, . . .  
True and tender and brave and just,  
That man might honor and woman trust."

REMARKS OF  
FRANK N. NAY.

*Mr. Chairman*,—The younger members of the bar, those who were admitted since the late chief justice went upon the bench, I think would all unite in bearing testimony to his universal kindness. The young man who went before him with a motion and had neglected to observe some rule of the court or had paid no attention to some statute that he ought to have known bore on the point, was never met with sharp retort or sarcastic observation. He was never sent out of the court with his face flaming and a feeling that he had made a fool of himself. He was met with some kindly suggestion, or the case was put over for a week for him to attend to the loose ends which he had neglected; and he left the court with the feeling that he had been reasonably and kindly treated.

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I think that the characteristic of the chief justice which impressed itself most upon me was his open-mindedness. He heard the whole of a case before he decided it. This was especially to be observed when he was sitting in cases without a jury or in the Equity Merit Session. He did not decide the case for the plaintiff until he had heard the last scrap of evidence for the defendant and all the defendant's attorney had to say, and he did not decide the case for the defendant until he had heard all that the plaintiff had to offer or his counsel to say. His mind was open until the end of the case. The complaint, that he knew more about the case in ten minutes after the case was opened than counsel who had been in it for perhaps a year, never applied to him in any way, and he never had to withdraw at any later stage of the case remarks made by him owing to his impressions at the beginning. And he was just as thorough in deciding a small case as he was in deciding a large one. In my own case I once filed a creditor's bill to reach and apply some interest which could not be reached otherwise. I went before the chief justice and asked him to give me an injunction. He read the bill, and said he could not grant either an injunction or an order of notice. I told him that, unless one or the other was granted, there would be no use in proceeding farther in the matter, as the property would be conveyed away and nothing further could be done. He said

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## ALBERT MASON

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he regretted it, but that, of course, could not change his views of the law. I told him I should abandon the case, as the amount was too small to proceed with it. The next morning I received a message from him, and I went to see him. He had been sitting in the Motion Session (it was near the end of his life); and there, with the work of the Motion Session upon him, he had taken the papers, and had done what counsel ought to have done. He had carefully examined the authorities, and had come to the conclusion that he might have granted the injunction; and then, sending for me, he granted it. *He* had done the work I should have done, and all in a case involving less than one hundred dollars.

## REMARKS OF CHARLES W. BARTLETT.

I came to speak of the chief justice, not particularly as a matter of duty, nor as a matter of admiration of the man, but I came to speak of him as a friend. This probably is the last time that we shall ever meet in a formal way to speak of the qualities that so strongly characterized his character.

I think that the chief justice was known by a great many men. He had many acquaintances, and he had many friends; but I never have believed

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## ALBERT MASON

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that any man ever knew Albert Mason who was not classed within an inner circle of intimate friendship. He was a shy, a modest man, and he extended his confidences carefully and slowly; but, when once he had given to you that friendship which all value so highly, and that confidence which all felt so proud of, when he was with us, it was irrevocable, and you then looked down into the great heart of Albert Mason, and knew what his true worth was.

I had known him by reputation in the war from his comrades and soldier friends in the Thirty-eighth Massachusetts Regiment. I knew of him afterward as a practising member of the bar. I, of course, have known him for the years he has been upon this bench; and month by month and year by year my friendship for him has steadily increased, and he grew upon me as a character to be admired and always to be remembered.

His record was a record of fine actions in whatever position he was called upon to fill. In his administration of justice in this court, his treatment of litigants, witnesses, counsel, nothing could be left to be desired, in the spirit of that fairness with which every one came to him for justice. He had perhaps almost an abnormal appreciation of the duties which he was to perform, and of his work. I don't know that I ever fully appreciated the exact significance of the work, or the word "work," until I heard Albert Mason, when discussing the position of affairs

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in his court, pronounce the word "work" so impressive and so full of meaning; and he devoted himself to the work of this court almost like a worship of that work and the duties that went with it.

There was one thing in his treatment of counsel: he was always absolutely impartial. No man could leave the court, old or young, without having felt that he had had the opportunity to say all and present all that could in any way aid the case of his client. I look back sometimes: I think of the cases that have been tried, and of incidents connected with the trials. I have seen him, myself, struggling up those stairs there, suffering agony, and alone. He never leaned upon anybody, but he would come up there, and I have seen him cling to the baluster rail and literally use his strength to pull him up to his place of work and duty; and I have kept back out of his sight, that he might not know that I was a spectator of the desperate struggles that he was making to get here to his place of duty. And he would be here on time. And, when he took his place there on that bench, his indomitable will could not remove from his face all traces of what he had gone through; but a microscopical observer could not detect it from his demeanor. When arguments were presented, they were listened to: when suggestions were made, they were heeded,—no undue haste, no criticism as to preparation or the importance of litigation. He viewed this court as the people's

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court, where they came to have their wrongs righted and their disputes settled; and I have wondered sometimes how it was possible for any man—knowing his physical condition and what he had gone through with—to be invariably so even-tempered, just, and considerate. All of us knew that when the time came to render his decision. I know there is one word in the English language that I have a new appreciation of when he pronounced it. If the question was a question of admission or exclusion of evidence, I always knew what he meant when he said simply “Excluded,” and probably all of us knew that that meant in one word just what he said, and that the incident was closed.

Now something has been said as to what his position would be, as to whether he was a genius. I never yet understood, and I never have heard any of my friends at the bar just explain to me, what a genius is in our profession. I know this, that, so far as his fidelity to duty was concerned, where has it been excelled? If genius means something beyond excellence—superexcellence—you could find it in Albert Mason’s career, in his handling of questions, his absolute fairness, his absolute honesty and integrity, both in thought and action.

I remember one incident when I saw the chief justice distressed. That was when it had come to his ears that somebody had complained that they had not been treated fairly in the division of the



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work of this court; and he himself, feeble as he was, was undertaking to add to his labors the care of the docket, fearing and saying to me, "True or not, it must not be said that there is any unfairness in the opportunities of litigants and counsel to present their matters to this court." Superexcellence could go no farther in guarding the rights of all. Wherever you take him and measure him, it seems to me you will find superexcellence, to say the least; and I think we will all agree I had peculiar opportunities to know him and to meet him in reference to the performance of the work of his court, where he would throw off a little of the modesty and shyness, so that I could see the real, true man, look into his heart, know his feelings, having him state them to me bravely and frankly and unreservedly; and, whatever estimate you may make of Albert Mason, the older members of this bar will never see his like again.

## REMARKS OF CHARLES COWLEY.

*Mr. Chairman*,—I do not rise to make a speech; but, as I have listened to the very appropriate remarks that have been made this afternoon, one incident in the life of the chief justice occurred to me which it seemed proper for me to relate here.

On one occasion I remember, in a private conversation had with him and some other gentlemen, he spoke rather regretfully of the fact that he never had had a collegiate education, and I was tempted to relate to him an incident which occurred in Boston many years ago. When William Wirt came here to try a case with Daniel Webster for his antagonist, he was invited by Josiah Quincy to breakfast, and at the breakfast table Mr. Quincy inquired, "Mr. Wirt, at what college did you graduate?" Mr. Wirt replied, "I never graduated at any college." Mr. Quincy rejoined, "Then you are the strongest argument I have ever heard against the utility of a college education." And said I to the late chief justice, "I think that might well be applied to your honor," and he took it very pleasantly.

I will not detain the members of the bar with any speech. I thought this anecdote might well come in. I have the profoundest and tenderest recollection of the late chief justice. I remember particularly the charge he gave to the jury in a capital trial in Northampton some seven or eight years ago. I don't even remember the name of the culprit who was then on trial; but I read the whole charge carefully through and through, and it seemed to me to be marvellous in its clearness and lucidity, its strict impartiality, not tending to lead the jury one way or the other, except by the helpfulness of its clear and lucid explanation of the principles and of the evidence involved.

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I made up my mind that he was the man for me to try a case before, which had been bothering me for five or six years, and which had been muddled up more and more by half a dozen judges and two Masters in Chancery, all of whose reports were set aside finally. And I watched for an opportunity when he was to sit in the Merit Session, and applied to him to set it down for trial; and he said he had heard of that case, and he did set it down for trial, though suffering much from asthma at the time; and in four half days he sifted that whole case, and sent down his memorandum for a final decree. A motion came in to set it aside. He very soon stopped the counsel who made it, saying, "I will hear you clear through, if you wish; but I want to say that I have submitted my memorandum of decree to all the members of the court who have had anything to do with the case, and they all agree that that is the only decree which can be sustained." That ended for me that long and annoying litigation.

## REMARKS OF ASA P. FRENCH.

I have just come up from the county where Albert Mason was born, from the town where he began to practise law, and where all that is earthly of him

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will rest forever. There he is loved and honored by all, by high and low, and this occasion would be incomplete without a single word of tribute from Plymouth County to the memory of *their* Chief Justice.

The Memorial was then adopted, and the meeting adjourned. Immediately after, the court was announced, and nearly all the judges of the Superior Court were present, with the chief justice presiding.

The attorney-general then addressed the court as follows:—

The Suffolk Bar, in evidence of the veneration in which, in common with the bar of the Commonwealth, it held the late chief justice, has met and adopted resolutions expressing in happy and appropriate phrase the sentiments of affection and gratitude which his long life and distinguished service have inspired. In obedience to a custom approved by long usage, its memorial is presented to the court by the attorney-general.

I bring to this official service the ready and earnest tribute of my own grateful appreciation of the constant instruction and inspiration of his learning, of his serene and beneficent wisdom, and of the example of his pure, useful, kindly, and honorable life.

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The attorney-general then read the Memorial as adopted by the meeting of the bar.

REMARKS OF  
ATTORNEY-GENERAL PARKER.

May it please your Honors: Not alone through his contributions to the literature and the recorded adjudications of the court is the true and lasting influence of the great jurist to be measured, nor is it to be limited by the written words of his just decrees. Though his physical presence must pass from recollection when our own memories of him shall no longer find speech because our own lips shall have become mute, it is still happily true that the story of a long, earnest, devoted, and arduous life shall reveal to one who shall read it in days yet to come the character, the soul, if not the very voice and mortal being of him whom we would have others know as we have known him.

As we have listened to-day to words of real affection, to the dignified periods of those who have made deliberate, discriminating, just analysis of his judicial qualities, and to the vivid recitals of his efficient activity in every field of high and worthy human effort, it has been almost as if he again sat upon this bench, patiently hearing, wisely deciding the multi-

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tudinous causes submitted to his judgment. Again he has walked among us, and in thought we have again had speech with him, and the very accents of his deep, inspiring voice have quickened our ears to a new sense. His grave though kindly and cheerful presence has lighted again this place of our assembling, and for the moment we have, through his demeanor and example, taken a new courage to bear and carry forward our own burdens and cares with something of the brave, uncomplaining fortitude with which he so long bore his own, and of which none of us had knowledge through a moment's faltering in his step or from even the passing shadow of repining on his brow.

Through the words that have been spoken, and through those which are to be preserved in the records of the court, Albert Mason, soldier, citizen, lawyer, and judge, chief justice of this tribunal of widest and most varied jurisdiction, shall be made to live again before others who had not seen him, and again to admonish, uplift, and sustain them as he has those of his own day.

We have met and we have spoken together, not merely that we might, through reflection upon our association with him, find selfish consolation for the loss we have sustained in his death, or, through the quick memory of the past, find momentary forgetfulness of a present sorrow. Duty and love alike command us to see to it that the friend and adviser

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whom we so greatly honor shall not by sad words of ours be obscured by the shadows of our grief from the sight of those to whom we would transmit his living and immortal memory and influence.

Simple, sincere, faithful, and strong in every hour of his living, his fitting eulogy must be phrased with like candor and simplicity. Though the imagination may be fired by the contemplation of a figure not without manifest heroic qualities, yet the austere though serene poise of his own mind compels us to so speak that the dignified modesty of his character shall not be offended by any accent of adulation.

A simple, pure nature is most difficult of analysis, for there is no precipitate of the dross of any color of contamination, nor in the flame of his life-work does the spectrum reveal the fire of any petty, selfish, or unworthy ambition or effort.

To say that Judge Mason had bravely and ably met every duty and responsibility that his citizenship, his professional and official obligations, had imposed upon him, is but to say that his was the typical character born of and developed by the requirements of those conditions that characterize our free, self-respecting, self-sustaining Commonwealth, and make it worth living for, worth dying for, if need be.

To say that as patriot he offered his life for his country is to say that, surviving, he had nobly earned the right to share in the national security and pros-

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perity with thousands of other brave men who had done battle for the right with him.

His early professional life brought him the recognition that fidelity, ability, tireless energy, and conscientious effort always make secure; and I am told that from the very first those qualities, ripening later into an extraordinary judicial faculty, were manifest in him.

He never measured success by comparison with the attainment or achievements of others. His standards were absolute, and kept immaculate in the sanctuary of his own conscience. No work, to him, was ever well done that did not respond to the requirements of that tribunal. I cannot conceive of his ever having determined upon any action without maturest and most patient inquiry and deliberation. No taint of prejudice ever stayed his candid, charitable inquiry. Nothing in the determination of the conduct of his private or of his judicial life rested upon facts taken for granted, or was based upon any assumptions. He sought always the elemental truth of any proposition before him, and through an intellect trained and developed through ceaseless exercise he was able, with almost infallible certainty, to discern this truth.

While vigor of youth was with him, and in the maturity of his physical and mental strength, he sustained without conscious or apparent effort the weight of his laborious days, counting every hour as dedi-



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cated to duty, and knowing no moment of relaxation while the voice of any duty not yet done spoke to the sensitive ear of his conscience.

The libraries of every court-house in the Commonwealth still speak of his study during the hours when counsel and litigants sought repose. The waiting cause was never delayed because the well-earned hour of his rest and recreation had come. Giving of his own strength that the weak might be made stronger, vigilant to see to it that no wrong or oppression should be done through the mere presentation of any cause, forgetful of himself, generously, willingly, he took up many burdens not his own, but too heavy for others to bear.

And so the time came when the debt that our physical being must ultimately pay for its efforts rested heavily upon him.

To the church and to the schools, to youth and to age, to the weak and to the strong alike, he lent the aid of his service, the counsel of his mature judgment and experience. His faith and his convictions were not exhibited by mere passive acquiescence in, or approval of, their declaration by others.

What he believed to be necessary or salutary for the community he strove to make others believe, and through his belief and action to bring it to real accomplishment. In him there was nothing of the pallid quality of indifference. Evil speech or un-

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worthy action in his presence never passed without his grave and effective rebuke. Unconscious of his own exalted virtue, assuming no censorship over others, he taught by the compelling influence of purity of thought and of living.

He dedicated his every thought and ability not alone to the high service of the law, but to the true welfare of the community, of which he held himself always a responsible part.

Through the long years of his service as presiding justice, these qualities of the man were apparent in his judgments. Profound learning had taught him that the elemental structure of the law must be maintained in its integrity; but he knew, also, that absolute, immutable rigidity cannot long preserve any structure of human mind or hand. He so administered the law, through recognition of its necessary and inherent flexibility, that it might be applied to given conditions in such wise that its true purpose should be attained in the establishment of justice.

The virtue, the integrity of his manhood spoke in his every decree.

No court of law can be forever maintained through the mere intrinsic vigor of its declarations. Its maintenance must ultimately depend upon the confidence and approval of the community whose rights it secures. In the recorded volumes of the law he has set lasting and luminous monuments and guides; but beyond this he has made the maintenance of

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our jurisprudence secure through his interpretation and administration, by which all suitors before him had come to know its justice.

The conspicuous intellectual and moral characteristic of the late chief justice seems to me to have been his absolute, unswerving devotion to duty. His nature was eminently cheerful, hopeful, cordial, and sympathetic, inviting confidence and inspiring affection. Model of all the excellencies of domestic, civic, and judicial life, he lived without reproach and died without fear.

“With as much zeal, devotion, piety,  
He always lived as other saints do die.”

RESPONSE OF  
THE CHIEF JUSTICE.

*Gentlemen of the Bar*,—The feeling of responsibility, inevitable and deep, in holding the high office of chief justice of this Court, is increased by every remembrance of him who preceded me. A young man, studious and sedate, then a volunteer soldier in the Union army during the Civil War, upon whom the horrors of that war seemed to have left such impress that he rarely indulged in reminiscences of the campaigns in which he took part;

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a town officer, a legislator, a lawyer at the bar for a score of years,—such is the barest epitome of the life of Chief Justice Mason up to the time when he was appointed to the bench twenty-three years ago.

At the bar some of you recall him. For my part, I have never been able to imagine him a practitioner of the law, participating in its contentions and strifes, perturbed by its perplexities, or harassed by its anxieties. This was not because he was unappreciative of or forgetful of the tribulations and exactions of the attorney's calling. It was because there was about him, when on the bench, an atmosphere of poise, serenity, and patience so constant, unvarying, and pervasive that he seemed to have been inducted into the judicial office without exposure to the ills of any probationary experience. Such, however, was not the fact. His life had been lived on no Olympus afar from mortals. He had been no recluse, I need not say, when you have in mind that for nearly ten years he had been chairman of the board of selectmen of a country town, and that for more than forty years, if we include his childhood, he had been in daily contact with those whose lot was the shop, the mill, the farm, the office. The judicial calmness and presence that clothed him as with a garment, in part innate, were also in larger part acquired and amplified by constant, conscious, yea, prayerful effort. In the proprieties of his judicial conduct there was no

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aberration. Elevated, learned, pure, upright, it may be said of him, as was said of Story, he never forgot the ermine that he wore. In court at times, when weariness for a moment had the mastery, a remark tinged with a mild savor of possible asperity might drop from his lips. Though patient, there was never any surrender of the control a presiding magistrate should have. Though mild, he was firm; though gentle, there was resolution that never flinched. He was outspokenly intolerant of dishonesty, indirection, or chicane. Rebuke, if needed, came quick and with no uncertainty. It was long withheld, if withheld it could be. In his look there was that which warned the transgressor, generally seasonably.

In this century it may be a caprice of fancy to think that the environment of Plymouth—his home for many years—moulded the man. But even his handwriting recalled the manuscript page of Bradford's History. And certain it is he had in unusual degree and combination those traits of character which marked and distinguished the leaders of that immortal band who landed there almost three centuries ago. In him there was the unfaltering courage, the moral fearlessness, the indomitable will, the abiding veneration for law, the profound piety and faith of the Pilgrim, tempered through and through, however, but unweakened by gracious kindness.

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For years he was a sufferer from an affliction which made breathing difficult. At times it seemed as if his unyielding determination would master the disorder. Sleepless nights were followed by wearisome days. Through it all he did his work unshrinkingly, heroically, and without a murmur of complaint. Though his physical strength might diminish, there was no abatement of mental vigor. The mind rose above the trammels of the body, and, in periods of extreme exhaustion, occasions are recalled when his charges to juries had extraordinary clearness.

The feeling of all of his associates upon the bench has been so felicitously expressed by one of them, who knew him long and intimately, that I am impelled to read it here: "We especially remember and refer to him for the many lovable personal qualities of mind and heart which endeared him to us,—for his kindness, gentleness, uniform courtesy; his natural and gracious dignity, unaffected simplicity, sincerity, purity of thought and speech; his absolute truthfulness; his perfect freedom from envy or jealousy,—always finding pleasure in the good fortune and happiness of others; his constancy in his friendships; his loyalty to his convictions, yet so respectful and tolerant of the honest opinions of others. We remember his constant thoughtfulness for our comfort and welfare, as well as his care for the due performance of our duties and for his ever-

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ready advice and assistance therein. In fine, we remember him for an inspiring example of a patient, useful, honorable, beneficent, and successful life, the cherished memory of which—while we grieve for its termination here—will remain with us as an inspiration to efforts for similar lives of honor and usefulness, and the faithful discharge of the important duties with which we also are intrusted.”

The memorial you have presented, together with a memorandum of these proceedings, will be entered upon the records; and the Court will now adjourn.

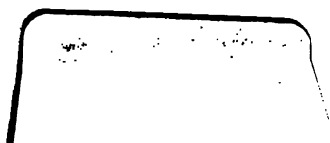




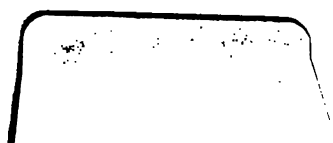












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